

REMARKS

Claims 1-21 are pending. Claims 1, 10, and 14 are the independent claims.

Preliminarily, we point out that the Action does not include an initialled Form PTO-1449 indicating that the Examiner considered the reference submitted with Applicant's Information Disclosure Statement filed July 8, 2002. For the Examiner's convenience we enclose a copy of that Form PTO-1449 and ask the Examiner to initial it and return it to us with his next communication.

We appreciate the Examiner's indication that claims 14-21 are allowed and the subject matter of claims 2, 12, and 13 are allowable.

With regard to the remaining claims (claims 1 and 3-11), they stand rejected as being obvious over Makinouchi (U.S. Patent 5,969,800) in view of Hill (U.S. Patent 6,137,574). We do not concede that the such claims are obvious in view of the cited references. Nonetheless, we submit that the rejection must be withdrawn for at least one other reason - the cited Hill patent is not prior art to the present application.

The present application is by Henry A. Hill (see filing receipt, copy enclosed). The cited Hill patent (U.S. Patent 6,137,574) is likewise by Henry A. Hill. Therefore, the present application and the cited Hill reference have the same inventive entity. Accordingly, the cited Hill patent cannot be prior art to the present application under either of 35 U.S.C. Section 102(a) or 35 U.S.C. Section 102(e). See MPEP § 2132(III) and MPEP § 2136.04, respectively.

Furthermore, the present application was filed on June 12, 2001, which is within one year of the issue date of the cited Hill patent (October 24, 2000) - therefore the cited Hill patent is not prior art to the present application under 35 U.S.C. Section 102(b). See MPEP § 2133.

Finally, the action provides no indication of how the cited Hill patent may be prior art under any other section of 35 U.S.C. Section 102.

Because the cited Hill patent is not a prior art reference to the present application, it cannot be used to form the basis of an obviousness rejection under 35 U.S.C. Section 103. See MPEP § 2141.01. We therefore ask that the Examiner withdraw the outstanding rejection.